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TRANSCRIPT OF RECORD.

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1894.

No. 910- 57 227 34.

A. B. ROFF, PLAINTIFF IN ERROR,

vs.

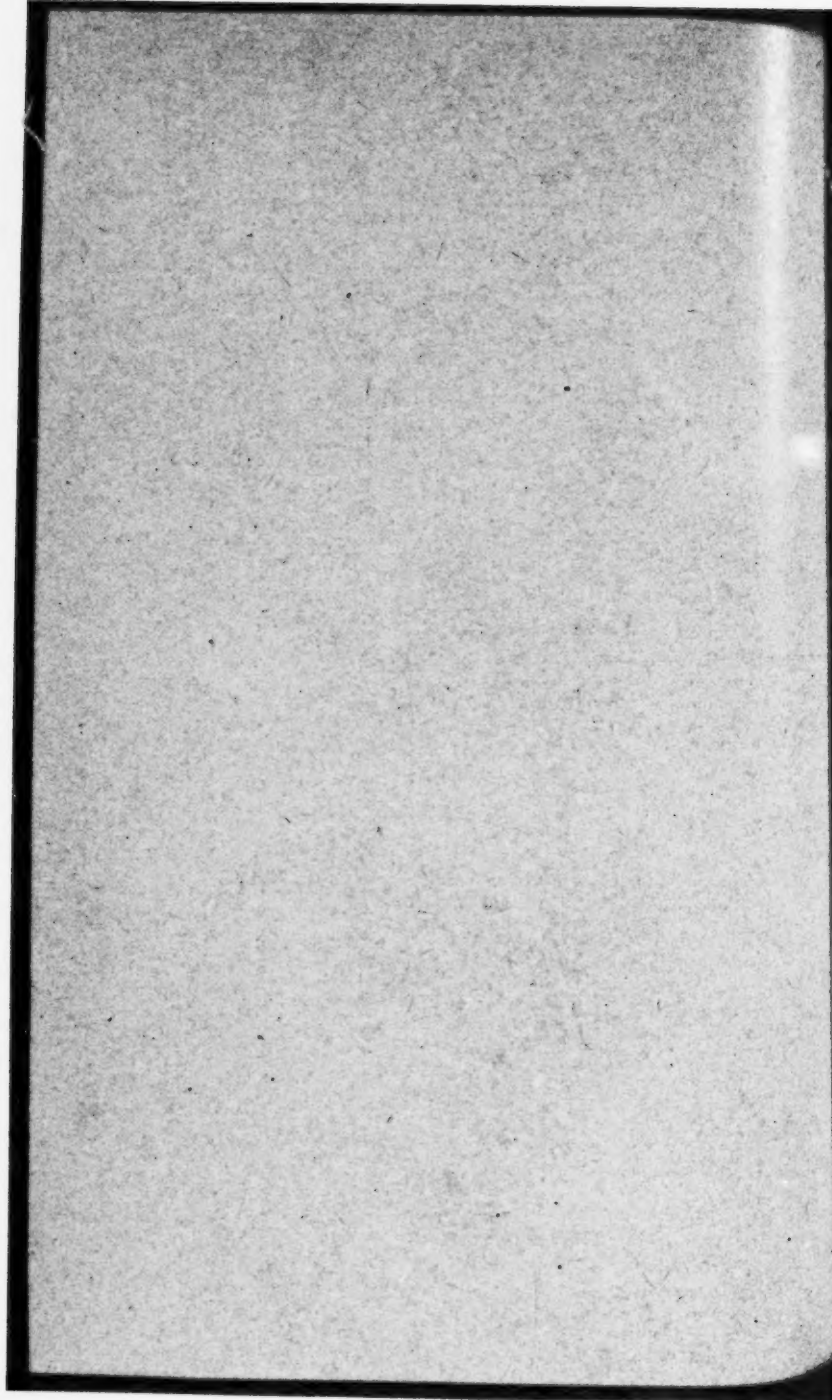
LOUISA BURNEY, AS ADMINISTRATRIX OF B. C. .
BURNEY, DECEASED.

IN ERROR TO THE UNITED STATES COURT FOR THE INDIAN
TERRITORY.

FILED FEBRUARY 15, 1895.

(15,794.)

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(15,794.)

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1894.

No. 910.

A. B. ROFF, PLAINTIFF IN ERROR,

vs.

LOUISA BURNEY, AS ADMINISTRATRIX OF B. C.
BURNEY, DECEASED.

IN ERROR TO THE UNITED STATES COURT FOR THE INDIAN
TERRITORY.

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1 In the United States Court in the Indian Territory, Third
Judicial Division, at Ardmore.

A. B. ROFF, Plaintiff,

vs.

LOUISA BURNEY, as Administratrix of the Estate of B. C.
Burney, Deceased, Defendant. } 1408.

Bill of Exceptions.

1st. Be it remembered that on the 6th day of November, 1893, the plaintiff, A. B. Roff, filed in the United States court in the Indian Territory, third judicial division, at Ardmore, against Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, his first amended complaint at law as follows:

In the United States Court in the Indian Territory, Third Judicial
Division, at Ardmore.

A. B. ROFF, Plaintiff,

vs.

LOUISA BURNEY, as Adm'x of B. C. Bur- } No. 1408. Amended
ney, Deceased, Defendant. } Complaint at Law.

Comes now the plaintiff, leave of the court being first obtained, and files this his first amended complaint in lieu and as a complete amendment to his original complaint filed herein on the 28th day of August, 1893, and makes the same read as follows:

The plaintiff, A. B. Roff, complaining of the defendant, Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, states that both the plaintiff and defendant reside in the Chickasaw nation, Indian Territory; that the plaintiff, A. B. Roff, is a natural-born citizen of the United States of America; that he has never in any way renounced his allegiance to said United States Government, and he has never taken an oath of allegiance to any foreign government of any kind whatsoever or any foreign king, potentate, or ruler of any such government; that plaintiff has ever been and is yet a citizen of the United States as aforesaid. Plaintiff states that in the year 1857 the legislature of the Chickasaw nation passed an act wherein and by reason whereof the heirs and nephews of Wm. H. Bourland, to wit, Amanda, Matilda, Gordentia, & Rum Hamah Bourland, were adopted as citizens of the Chickasaw nation. Now, this plaintiff states and charges the truth to be that on the 7th day of October, 1876, the legislature of the Chickasaw nation passed an act wherein and by reason and virtue whereof the children and nephews of Wm. H. Bourland, to wit, Amanda Bourland, Matilda Bourland, Gordentia Bourland, and Rum Hamah Bourland, were adopted citizens of said Chickasaw nation and members and citizens of the tribe of Chickasaw Indians; a copy of said act of said Chickasaw legislature is hereto annexed,

marked "Exhibit A," and made a part hereof; that said act was but a confirmation of said act of 1857 aforesaid. Now, plaintiff states that said children and nephews of said Wm. H. Bourland aforesaid by reason and by virtue of said act of said Chickasaw legislature became and were and ever since said year 1857 have been members of the tribe of Chickasaw Indians and citizens of said Chickasaw nation and as such were and ever since said date have been entitled to all the rights, immunities, and privileges of a Chickasaw Indian by blood guaranteed unto him by the Constitution and laws of the

United States, the constitution and laws of the said Chickasaw nation, and the treaties between the Government of the United States and said tribe of Chickasaw Indians and the tribe of Choctaw Indians.

Plaintiff states that on or about the 11th day of November, 1867, that according to the laws, customs, and usages of said tribe of Chickasaw Indians and of said Chickasaw government he was duly and legally married to the said Matilda Bourland (adopted by said act of said legislature as a citizen of said nation and member of said tribe as aforesaid), and that by reason and virtue of said intermarriage with said Matilda Bourland, under the Constitution and laws of the United States, the constitution and laws of said Chickasaw nation, and the treaties between the United States Government and the Chickasaw and Choctaw tribes of Indians, he became and was and ever since said date has been a member of the tribe of Chickasaw Indians and a citizen of said Chickasaw government, and entitled to all the rights, privileges, and immunities of a Chickasaw Indian by blood; but plaintiff alleges that, contrary to the Constitution and laws of the United States and contrary to the constitution and laws of the said Chickasaw nation and contrary to the treaties between the United States and the Chickasaw and Choctaw tribes of Indians, on the 13th day of October, 1883, said Chickasaw legislature passed another and different act wherein and by reason and virtue whereof it is attempted to repeal said act of said legislature of October 7th, 1876, and said act of 1859, and to disclaim, renounce, and repudiate the citizenship of said Bourland heirs and

of this plaintiff, acquired thereunder in the manner aforesaid, and to deny this plaintiff any right as a member of said tribe of Chickasaw Indians or a citizen of said Chickasaw nation. A copy of said last-named act of said Chickasaw legislature is hereto annexed, marked "Exhibit B," and made a part hereof. Now, this plaintiff states and charges the truth to be that ever since the passage of said last-named act the said Chickasaw government and all the courts and officials thereof have refused to recognize this plaintiff as a member of said tribe of said Chickasaw Indians or as a citizen of said Chickasaw government, and that hitherto, since said date, all the courts of said Chickasaw government have refused to entertain jurisdiction of any controversy between this plaintiff and a member of said tribe of Chickasaw Indians, and that they do yet refuse to entertain jurisdiction of such controversies.

Plaintiff states that B. C. Burnley during his lifetime was a mem-

ber of the tribe of Chickasaw Indians by blood, and that the defendant, Louisa Burney, as administratrix of the estate of said B. C. Burney, deceased, is a member by blood both of the Chickasaw and Choctaw tribe of Indians and a citizen of both the Chickasaw and Choctaw nations; that said Louisa Burney is the duly and legally appointed administratrix of the estate and is the surviving widow of said B. C. Burney, deceased, qualified and acting as such administratrix under appointment by the probate tribal court of said Chickasaw nation. The plaintiff states that heretofore, to wit, on the 24th day of October, 1890, one A. H. Knight, a

5 citizen of the United States, in the United States court in the Indian Territory, third judicial division, at Ardmore, recovered judgment against said B. C. Burney, who was then living, and plaintiff, A. B. Roff, for the sum of fifteen hundred and twenty-five (\$1,525.00) dollars, with interest thereon from said date at the rate of twelve per cent. per annum, and the costs of said suit. The plaintiff states that said judgment was based upon and said suit was filed upon a certain foreign judgment theretofore rendered in the district court of Cooke county, in the State of Texas, and that said court was a court of general jurisdiction and had jurisdiction of the subject-matter of said suit as well as the parties plaintiff and defendant thereto. Plaintiff states that said suit and judgment rendered in the district court of Cooke county, Texas, was based upon a certain promissory note for a valuable consideration paid B. C. Burney, signed by said B. C. Burney, plaintiff; A. B. Roff, and others, and payable to the order of said A. H. Knight at a date anterior to the rendition of said judgment last aforesaid; that said note was made, dated, and was payable in the town of Gainesville, in the county of Cooke, in the State of Texas, and bore interest from date, as per the stipulations in said note, at the rate of twelve per cent. per annum; and this plaintiff alleges that at the date of said note twelve per cent. per annum was the legal and conventional rate of interest under the constitution and laws of Texas, the place where said note was executed, delivered, and payable as aforesaid.

6 Plaintiff states that of all the signers of said note aforesaid that said B. C. Burney was the sole and only beneficiary, and that this plaintiff never received any consideration for signing said note, but signed the same at the request of and as an accommodation to said B. C. Burney; that said note upon its face showed that plaintiff and all other signers thereto were principal makers thereof and beneficiaries therein; but plaintiff states that he was but a surety upon the same and signed the same, at said Burney's request, to secure the payment of said note.

Plaintiff states that said Burney during his lifetime always admitted and never denied the fact that he was the sole and only beneficiary on said note, and that on the 16th day of July, 1891, said B. C. Burney paid eight hundred (\$800.00) dollars on said judgment of \$1,525.00 rendered in said United States court as aforesaid, and agreed with this plaintiff and said A. H. Knight that he would pay the remainder of said judgment and costs, which plaintiff alleges he never did.

Now, plaintiff states that after the death of said B. C. Burney that he, plaintiff, was compelled to and did pay the remainder of said judgment, whereby and by reason whereof the estate of said B. C. Burney, his heirs, executors, and administrators, promised and became liable to pay plaintiff the sum of ten hundred & forty-four & $\frac{27}{100}$ dollars (\$1,047.27), with interest thereon from the 12th day of June, 1893, at the rate of twelve per cent. per annum. Now, plaintiff states that he has presented his said claim, duly and legally proven and verified, to the defendant, Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, for allowance and payment; but plaintiff states that said administratrix has refused to pay said claim and has wholly disallowed the same, and that the tribal courts of said nation refuse to allow said claim of plaintiff against said estate or to direct or compel said administratrix to allow or pay the same.

Plaintiff states that said administration of the estate of B. C. Burney, deceased, is pending in and that said estate is being administered in the probate tribal courts of the Chickasaw nation under and by virtue of the statutory law of said Chickasaw nation and the rules of decision at common law. Plaintiff states that since the death of said B. C. Burney and since said Louisa Burney qualified as administratrix of said estate as aforesaid that she, the said Louisa Burney, has wrongfully, unlawfully, and tortiously misapplied and misappropriated the property and funds of said estate, and has wrongfully, unlawfully, and tortiously loaned out divers and sundry sums of money belonging to said estate without first paying plaintiff's debt against said estate, and that said defendant is about to remove a material portion of the money and property of said estate beyond the limits of the Indian Territory and the jurisdiction of this court.

Plaintiff states that by reason of the wrongful, unlawful, and tortious acts of said Louisa Burney as aforesaid she has become and is the administratrix *de son tort* of said B. C. Burney, deceased, and as such is liable to plaintiff for the payment of his debt against said estate.

Wherefore the plaintiff prays that a writ of attachment do issue against the property of said estate of B. C. Burney, deceased, and that upon final hearing he have judgment against said Louisa Burney individually as administratrix of said estate for his said debt, interest, costs of suit, and all proper relief.

HERBERT & HERBERT,

Att'ys for Plaintiff.

A. B. Roff, the plaintiff in the foregoing complaint, upon oath states that the statements in said complaint are true, as he verily believes.

A. B. ROFF.

Subscribed and sworn to before me this the 6th day of November, A. D. 1893.

[L. S.]

A. EDDLEMAN,

Notary Public, Third Division, I. T.

The foregoing is endorsed as follows: In the United States court. No. 1408. A. B. Roff, plaintiff, *vs.* Louisa Burney, as adm'x of the estate of B. C. Burney, dec'd, defendant. 1st amended complaint. Filed in open court Nov. 6, 1893. Joseph W. Phillips, clerk. Herbert & Herbert, attorneys for plaintiff.

2nd. That afterwards, on the same day, to wit, November 6th, 1894, at the October term of said United States court, at Ardmore, beginning on the 16th day of October, 1894, and ending November 21st, 1894, the said defendant, Louisa Burney, as such administratrix, filed in said court her demurrer and plea to the jurisdiction of this court as follows:

9 In the United States Court in the Indian Territory, Third Judicial Division, at Ardmore.

A. B. ROFF

vs.

LOUISA BURNEY, Adm'x of the Estate of
B. C. Burney.

} Demurrer & Plea to
the Jurisdiction.

Now comes the defendant, and for answer, appearing only for the purpose of controverting the jurisdiction of this court, says that the plaintiff cannot recover in this cause because she says that said complaint shows that said B. C. Burney was during his lifetime a member of the Chickasaw tribe of Indians, and that this defendant is a member of said Chickasaw tribe of Indians and is administering upon said estate in the tribal courts of said Chickasaw nation, and that the plaintiff is a member of said Chickasaw tribe of Indians by marriage, and does not show that plaintiff has ever made an effort to have the tribal courts of said Chickasaw nation entertain this suit, upon which she prays the judgment of the court.

JOHNSON, CRUCE & CRUCE,
CAMPBELL & WEST,

Attorneys for Defendant.

3rd. That afterwards, to wit, on the 21st day of November, 1894, at said term of court, before the Honorable Chas. B. Stuart, judge thereof, the above cause came on to be heard upon the said complaint and demurrer and plea to the jurisdiction. Thereupon the parties, by their respective attorneys, appeared, and upon the hearing of said demurrer and plea to the jurisdiction the court rendered the following judgment, as follows:

10

A. B. ROFF, Plaintiff,

vs.

Mrs. LOUISA BURNEY, Adm'x, Defendant.

} No. 1408.

This day coming on to be heard the defendant's demurrer to the plaintiff's complaint and the same being considered by the court, the court is of the opinion that the same should be sustained, and, the

plaintiff declining to amend, it is therefore ordered, adjudged, and decreed by the court that the complaint in this case fails to show that the court has jurisdiction to try and determine this cause, and it is ordered that this cause be dismissed for want of jurisdiction, and, the plaintiff having excepted, it is ordered that the plaintiff have sixty days to perfect his bill of exceptions and prepare his appeal, and that the supersedeas bond be fixed at fifteen hundred dollars.

4th. That afterwards, to wit, on the 21st day of November, 1894, and before the adjournment of said October term of court, upon motion of plaintiff made in open court, he was allowed sixty days after the adjournment of said term of court to prepare and file his bill of exceptions.

5th. And be it further remembered that the plaintiff in open court excepted to the ruling of the court sustaining said demurrer and plea to the jurisdiction of the court and dismissing this cause from the docket of said court, and requested that said jurisdictional question and so much of the record as is necessary
11 be certified to the Supreme Court of the United States for its decision, and now here tenders his bill of exceptions containing all the record necessary to advise the Supreme Court of the jurisdictional question involved herein, and prays that the same be approved, signed, ordered filed and made a part of the record herein, which is, on the 9th day of January, A. D. 1895, at —, in the Indian Territory, accordingly so done.

CHAS. B. STUART,

Judge of the U. S. Court in the Indian Territory.

I hereby agree that the foregoing is a true & correct bill of exceptions.

This the 7th day of Jan'y, 1895.

ROBT H. WEST,

Attorney for Defendant.

The foregoing is endorsed as follows: No. 1408. A. B. Roff vs. Louisa Burney, adm'x. Bill of exceptions. Filed Jan. 11, 1895. Joseph W. Phillips, clerk.

Petition for Writ of Error.

In the United States Court in the Indian Territory, Third Judicial Division, at Ardmore.

A. B. ROFF, Plaintiff,

vs.

LOUISA BURNEY, as Administratrix of B. C. Burney, Deceased, }
Defendant.

Petition for writ of error.

To the honorable Supreme Court of the United States and to the Honorable Chas. B. Stuart, judge of the United States court 12 in the Indian Territory:

The plaintiff, A. B. Roff, in the above entitled and numbered cause, complaining of the defendant, Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, respectfully alleges that in the record and proceedings of the United States court in the Indian Territory, third judicial division, at Ardmore, in the above numbered and entitled cause, as well as in the final judgment therein rendered, there are manifest errors.

Wherefore your petitioner, A. B. Roff, prays that a writ of error issue for the removal of said cause in the Supreme Court of the United States for review and revision, and that said judgment be reversed.

Your petitioner further represents that the only question which he desires to review is the question of the jurisdiction of the said United States court over the persons of the said plaintiff and defendant, which has been adversely decided against the plaintiff, A. B. Roff, as will appear by the final judgment of said court and by the assignments of error filed herein.

C. L. HERBERT,

Attorney for A. B. Roff, Plaintiff.

The foregoing is endorsed as follows: No. 1408. A. B. Roff *vs.* Louisa Burney, adm'x. Petition for writ of error. Filed Jan. 7, 1895. Joseph W. Phillips, clerk.

13 In the United States Court in the Indian Territory, Third Judicial Division, at Ardmore.

A. B. ROFF, Plaintiff,

vs.

LOUISA BURNEY, as Adm'x of the Estate of } Assignments of Error.
B. C. Burney, Deceased, Defendant.

Now comes the plaintiff, A. B. Roff, and respectfully says that there are the following errors in the proceedings of this cause:

First. The plaintiff in his complaint having alleged that he was

a natural-born citizen of the United States and had never renounced his allegiance to said Government or taken the oath of allegiance to any foreign government of any kind whatsoever, the trial court erred in sustaining defendant's plea to the jurisdiction of the court and in dismissing this cause on the ground that the complaint further alleged that plaintiff was also a member of the tribe of Chickasaw Indians by intermarriage and the defendant a member of such tribe by blood.

Second. The complaint having alleged that the tribal courts of the Chickasaw nation and the legislature of said nation, by act passed, repudiated and disclaimed the citizenship of A. B. Roff, the court erred in holding it had no jurisdiction of the controversy between plaintiff and defendant, because the complaint further alleged that plaintiff and defendant were members of the same tribe of Indians.

C. L. HERBERT,

Attorney for A. B. Roff, Plaintiff.

14 The foregoing is endorsed as follows: No. 1408. A. B. Roff *vs.* Louisa Burney, adm'x. Assignments of error. Filed Jan. 7, 1895. Joseph W. Phillips, clerk.

Copy of Writ of Error.

UNITED STATES OF AMERICA, 88:

The President of the United States of America to the honorable judge of the United States court in the Indian Territory, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which was in the United States court, before you, at the October term, 1894, thereof, between A. B. Roff, as plaintiff, and Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, in cause number 1408, pending in said court, entitled A. B. Roff, plaintiff *vs.* Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, defendant, a manifest error hath happened, to the great damage of the said A. B. Roff, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the said record and proceedings aforesaid at the city of Washington, in the District

15 of Columbia, and filed in the office of the clerk of the Supreme Court of the United States, on or before the — day of —, 1895, to the end that, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right

and according to the laws and customs of the United States should be done.

Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 9th day of January, in the year of our Lord one thousand eight hundred and ninety-five.

Issued at office, in the town of Ardmore, Indian Territory, with the seal of the clerk of the United States court in the Indian Territory, third judicial division, at Ardmore, and dated as aforesaid.

JOSEPH W. PHILLIPS,

Clerk of United States Court in the Indian Territory.

CHAS. B. STUART,

Judge of the United States Court for the Indian Territory.

The foregoing is endorsed as follows: No. 1408. A. B. Roff, plaintiff in error, vs. Louisa Burney, adm'x, defendant in error. Copy writ of error. Filed Jan. 11, 1895. Joseph W. Phillips, clerk.

Citation in Error.

UNITED STATES OF AMERICA:

To Louisa Burney, as administratrix of B. C. Burney, deceased,
Greeting:

You are hereby cited and admonished to be and appear in
16 the Supreme Court of the United States, at Washington,
within thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the United States court in the Indian Territory, third judicial division, at Ardmore, wherein A. B. Roff is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said A. B. Roff, plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done the parties in that behalf.

Witness the Honorable Chas. B. Stuart, judge of the United States court in the Indian Territory, this 9th day of January, in the year of our Lord one thousand eight hundred and ninety-five.

CHAS. B. STUART,

Judge of the United States Court in the Indian Territory.

I hereby accept full and complete service and notice of the foregoing citation in error this January 11th, 1895.

ROBT H. WEST,

Attorney for Defendant in Error, Louisa Burney, Adm'x.

The foregoing is endorsed as follows: No. 1408. A. B. Roff, plaintiff in error, vs. Louisa Burney, defendant in error. Citation in error. Filed Jan. 11, 1895. Joseph W. Phillips, clerk.

17 INDIAN TERRITORY,)
Third Judicial Division. }

Know all men by these presents that we, A. B. Roff and ———, are held and firmly bound unto Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, in the full and just sum of fifteen hundred dollars, to be paid to the said Louisa Burney, as such administratrix, her heirs, executors, administrators, or assigns; to which payment, well and truly to be made, we bind ourselves, our heirs, executors, and administrators, jointly and severally, by these presents.

Sealed with our seals and dated this the 7th day of January, in the year of our Lord one thousand eight hundred and ninety-five.

Whereas lately, at the October term, 1894, of the United States court in the Indian Territory, third judicial division, at Ardmore, in a suit depending in said court between A. B. Roff, plaintiff, and Louisa Burney, as administrat-ix of the estate of B. C. Burney, deceased, defendant, judgment final was rendered against the said A. B. Roff, and the said A. B. Roff has obtained a writ of error of the said court to reverse the judgment in the aforesaid suit, and a citation directed to the said Louisa Burney, as administrat-ix as aforesaid, citing and admonishing her to be and appear in the Supreme Court of the United States, at Washington, thirty days from and after the date of said citation:

Now, the condition of the above obligation is such that if
 18 the said A. B. Roff shall prosecute said writ of error to effect and answer all damages and costs if he fail to make his plea, then the above obligation to be void; otherwise to remain in full force and virtue.

Witness our hands this 7th day of January, 1895.

A. B. ROFF.
 B. F. FRENSLEY.
 ROBT F. SCIVALLY.
 ROBT M. RINER.

Approved by—

CHAS. B. STUART,

*Judge United States Court
 in the Indian Territory.*

I hereby certify that in my opinion B. F. Frensley, Rob't F. Scivally, and Robert M. Riner are solvent and worth, above all debts and exemptions, many times more than amount of above-mentioned bond, & if presented to me for approval I would approve the same.

Witness my hand this the 7th day of January, A. D. 1895.

J. W. PHILLIPS, *clk*,
 By F. J. PEARCE, *D. C.*

The foregoing is endorsed as follows: No. 1408. A. B. Roff vs. Louisa Burney, adm'x. Supersedeas bond. Filed Jan. 11, 1895. Joseph W. Phillips, clerk.

19 UNITED STATES OF AMERICA, 88 :

The President of the United States of America to the honorable judge of the United States court in the Indian Territory, Greeting:

Because in the record and proceedings, as also in the rendition of the judgment of a plea which was in the United States court, before you, at the October term, 1894, thereof, between A. B. Roff, as plaintiff, and Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, as defendant, in cause number 1408, pending in said court, entitled A. B. Roff, plaintiff, *vs.* Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, defendant, a manifest error hath happened, to the great damage of the said A. B. Roff, as by his complaint appears, we, being willing that error, if any hath been, should be duly corrected and full and speedy justice done the parties aforesaid in this behalf, do command you, if judgment be therein given, that then, under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the said record and proceedings aforesaid at the city of Washington, in the District of Columbia, and filed in the office of the clerk of the Supreme Court of the United States on or before the — day of —, 1895, to the end that, the record and proceedings aforesaid being inspected, the said Supreme Court of the United States may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

20 Witness the Honorable Melville W. Fuller, Chief Justice of the Supreme Court of the United States, this 9th day of January, in the year of our Lord one thousand eight hundred and ninety-five.

Issued at office, in the town of Ardmore, Indian Territory, with the seal of the clerk of the United States court in the Indian Territory, third judicial division, at Ardmore, and dated as aforesaid.

JOSEPH W. PHILLIPS,

Clerk of the United States Court in the Indian Territory.

CHAS. B. STUART,

Judge of the United States Court for the Indian Territory.

21 [Endorsed:] No. 1408. A. B. Roff, plaintiff in error, *vs.* Louisa Burney, adm'x, defendant in error. Original writ of error. Filed Jan. 11, 1895. Joseph W. Phillips, clerk.

I hereby certify that a true, correct, and literal copy of the foregoing writ of error was on this the 11th day of January, A. D. 1895, lodged and filed with the clerk of the United States court in the Indian Territory, 3d judicial division, at Ardmore, and that the same is now on file among the papers of said cause No. 1408, A. B. Roff *vs.* Louisa Burney, adm'x.

Witness my hand and seal of office, at office, in town of Ardmore, this the 11th day of January, A. D. 1895.

[Seal United States Court, Indian Territory, Third Division.]

JOSEPH W. PHILLIPS,
Clerk U. S. Court, Indian Territory,
3d Judicial Division, at Ardmore.

22 United States of America to Louisa Burney, as administratrix of B. C. Burney, deceased, Greeting:

You are hereby cited and admonished to be and appear in the Supreme Court of the United States, at Washington, within thirty days from and after the day this citation bears date, pursuant to a writ of error filed in the clerk's office of the United States court in the Indian Territory, third judicial division, at Ardmore, wherein A. B. Roff is plaintiff in error and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said A. B. Roff, plaintiff in error, as in said writ of error mentioned, should not be corrected and why speedy justice should not be done to the parties in that behalf.

Witness the Honorable Chas. B. Stuart, judge of the United States court in the Indian Territory, this 9th day of January, in the year of our Lord one thousand eight hundred and ninety-five.

CHAS. B. STUART,
Judge of the United States Court in the Indian Territory.

I hereby accept full and complete service and notice of the foregoing citation in error this January 11th, 1895.

ROBT H. WEST,
Att'y for Def't in Error, Louisa Burney, Adm'x.

23 [Endorsed:] No. 1408. A. B. Roff, plaintiff in error, *vs.* Louisa Burney, defendant in error. Citation in error. Filed Jan. 11, 1895. Joseph W. Phillips, clerk.

24 *Clerk's Certificate.*

INDIAN TERRITORY, }
Third Judicial Division. }

I, Joseph W. Phillips, clerk of the United States court in the Indian Territory, third judicial division, do hereby certify that the foregoing is a full, true, and correct transcript of the record and are proceedings had in cause ~~1408~~ 1408, wherein A. B. Roff is plaintiff and Louisa Burney, as administratrix of the estate of B. C. Burney, deceased, is defendant, relative to the jurisdictional question involved lately pending in the United States court at Ardmore; and I do further certify that the original writ of and citation in error are also included in this transcript.

In testimony whereof I have hereunto affixed the seal of said court, at Ardmore, Indian Territory, and signature of the clerk thereof.

This the 12th day of January, A. D. 1895.

[Seal United States Court, Indian Territory, Third Division.]

J. W. PHILLIPS,

*Clerk of the U. S. Court in the Indian Territory,
Third Judicial Division,*

By F. J. PEARCE, *Deputy.*

Endorsed on cover: Case No. 15,794. Indian Territory U. S. court. Term No., 910. A. B. Roff, plaintiff in error, vs. Louisa Burney, as administratrix of B. C. Burney, deceased. Filed February 15, 1895.



SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1897.

No. 34.

A. B. ROFF, PLAINTIFF IN ERROR.

U.S.

LOUISA BURNEY, AS ADM'X, &c.

WRIT OF CERTIORARI AND RETURN.

THE UNITED STATES OF AMERICA, ss :

[Seal of the Supreme Court of the United States.]

The President of the United States to the judges of the United States court for the Indian Territory, Greeting :

Whereas in a certain suit in said United States court, between A. B. Roff, plaintiff, and Louisa Burney, as administratrix of B. C. Burney, deceased, defendant, which suit was removed to the Supreme Court of the United States by virtue of a writ of error, agreeably to the act of Congress in such case made and provided, a diminution of the record and proceedings of said cause has been suggested, to wit—

That Exhibits "A" and "B," attached to the amended complaint in the court below, are omitted from the transcript of the record :

You therefore are hereby commanded that, searching the record and proceedings in said cause, you certify what omissions, to the extent above enumerated, you shall find to the said Supreme Court of the United States, so that you have the same, together with this writ, before the said Supreme Court forthwith.

Witness the Honorable Melville W. Fuller, Chief Justice of the United States, the 26th day of October, A. D. 1897.

JAMES H. MCKENNEY,

Clerk of the Supreme Court of the United States.

[Endorsed:] Filed Nov. 2, 1897, 2 p. m. C. M. Campbell, clerk.

"EXHIBIT A."

An act granting citizenship to the heirs of Wm. H. Bourland.

SECTION 1. Be it enacted by the legislature of the Chickasaw nation, That the right of citizenship is hereby granted to the follow-

ing-named children and nephews of Wm. H. Bourland: Amanda, Matilda, Gordentia and Run Hannah.

Approved October 7, 1876.

B. F. OVERTON, *Governor.*

"EXHIBIT B."

An act repealing an act granting citizenship to the heirs of W. H. Bourland.

SECTION 1. Be it enacted by the legislature of the Chickasaw nation, That the rights of citizenship granted to the following-named children and nephews of W. H. Bourland, Amanda, Matilda, Garduria and Run Hannah, approved October 7, 1876, the same is hereby repealed and annulled.

SECTION 2. Be it further enacted, That the governor is hereby directed and required to remove said parties and their descendants beyond the limits of this nation, and that this act take effect from and after its passage.

Passed the senate, October 11, 1883.

JONAS WOLF,
President of the Senate.

Attest: JO. BROWN,
Secretary Senate.

Passed the house of representatives October 13, 1883.

L. FRAZIER, *Speaker.*

Attest: A. L. MCKINNEY, *Clerk.*

The above act became a law by reason of limitation.

THOS. W. JOHNSON,
National Secretary, C. N.

We, the undersigned attorneys, hereby agree that the foregoing are true and correct copies of the exhibits referred to in the first amended complaint of the plaintiff in cause No. 1408, A. B. Roff, plaintiff, *vs.* Mrs. Louisa Burney, administratrix of the estate of B. C. Burney, deceased, defendant, recently pending in the United States court, Indian Territory, third judicial division (now southern district), at Ardmore, which said exhibits were omitted from the record of said cause filed in the Supreme Court of the United States in cause No. 910, entitled A. B. Roff, plaintiff in error, *vs.* Louisa Burney, as administratrix of B. C. Burney, deceased, defendant in error, now pending in said last-named court on writ of error, and agree that said foregoing copies may be filed and by said court may be considered as a part of the record in said cause.

C. L. HERBERT,
Attorney for Plaintiff in Error.

ROBT H. WEST,
POTTERF & BOWMAN,
Attorneys for Defendant in Error.

I, Charles M. Campbell, clerk of the United States court for the southern district of the Indian Territory, do hereby certify that I have searched for and have not been able to find Exhibits "A" and "B" referred to in the first amended complaint of the plaintiff in cause No. 1408, entitled A. B. Roff, plaintiff, vs. Mrs. Louisa Burney, administratrix, defendant, lately pending in the United States court in the Indian Territory, third judicial division (now southern district), at Ardmore; and I further certify that the signature of C. L. Herbert, for plaintiff in error, and R. H. West and Potterf & Bowman, for defendant in error, to the foregoing agreement are genuine, and that C. L. Herbert and Robert H. West are attorneys of record in the trial court for plaintiff and defendant respectively.

In testimony whereof witness my hand and the seal of said court this 2nd day of November, 1897.

{ Seal United States Court in the Indian Territory, }
 { Southern District, Ardmore. }

C. M. CAMPBELL,

*Clerk U. S. Court for the Southern District of the
 Indian Territory,*

By — — —, *Deputy.*

[Endorsed:] Case No. 15,794. Supreme Court U. S., October term, 1897. Term No., 34. A. B. Roff *et al.*, pl'ff in error, vs. Louisa Burney *et al.* Writ of certiorari and return. Office Supreme Court U. S. Filed Nov. 6, 1897. James H. McKenney, clerk.